

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO**

IN RE: } Case No. 07-03232-ESL  
RAMON COLON GUZMAN } Chapter 13  
ELSA ALCANTARA GARCIA }  
Debtors. }

**UNITED STATES' MOTION TO DISMISS OR CONVERT**

The United States hereby moves to dismiss this bankruptcy case. In the alternative, the United States requests that this case be converted to one under Chapter 7 of the Bankruptcy Code. In support of this motion, the United States avers as follows:

1. The Internal Revenue Service ("Service") filed a proof of claim on August 28, 2007 in the amount of \$49,976, representing a priority claim in the amount of \$39,702 and general claim in the amount of \$10,274. The priority claim was estimated, in part, because the debtors failed to file income tax returns for the tax years 2002, 2003, 2004, 2005, and 2006. (Copy of proof of claim attached as "Exhibit A.")
2. 11 U.S.C. § 1308 requires debtors to file tax returns for all the taxable periods ending during the 4-year period ending on the date of the filing of the petition.
3. 11 U.S.C. § 1325(a)(9) provides that the court shall confirm a plan if the debtor has filed all applicable returns as required by section 1308.
4. Without receipt of the past due returns from the debtors, the Service cannot determine the correct amount of its claims, and, in turn, determine if the plan is feasible. See 11 U.S.C. § 1325(a)(6); Howard v. Lexington Inv., Inc., 284 F.3d 320, 323 (1<sup>st</sup> Cir. 2002) ("unfiled state tax returns created major impediment to the creation of a confirmable plan"); Vomhof v. United States, 207 B.R. 191, 193 (D. Minn. 1997) ("[i]ncome tax returns are necessarily helpful in determining the feasibility of a proposed plan.")
5. Upon the debtor's failure to file a tax return under 11 U.S.C. § 1308, after

notice and a hearing, the Court shall dismiss a chapter 13 case or convert the case to one under chapter 7. See 11 U.S.C. §§ 1307(e), 1308(a).

6. The debtors are not subject to the provisions of the Servicemembers Civil Relief Act of 2003. (Copies of debtors' Military Status Reports attached as "Exhibit B.")

WHEREFORE, the United States requests that this bankruptcy case be dismissed, or, in the alternative, converted to a case under Chapter 7 of the Bankruptcy Code.

**Parties in interest are granted thirty (30) days from the date of this notice to oppose the United States' motion to convert or dismiss and request a hearing.**

DATED: November 1, 2007.

Respectfully submitted,

ROSA E. RODRGUEZ-VELEZ  
United States Attorney

/s/ Thomas J. Jaworski  
THOMAS J. JAWORSKI  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 227  
Washington, D.C. 20044  
Telephone: (202) 307-0854  
Facsimile: (202) 514-6866

**CERTIFICATE OF SERVICE**

IT IS CERTIFIED that the foregoing UNITED STATES' MOTION TO DISMISS OR CONVERT and proposed ORDER, which will be filed electronically and available for viewing and downloading from the Court's ECF system, were caused to be served on the 1st day of November, 2007, by depositing copies thereof in the United States mail, postage prepaid, addressed as follows:

RAMON COLON GUZMAN  
P.O. Box 4124  
Carolina, PR 00984  
Debtor

MONSITA LECAROZ ARRIBAS  
Office of the U.S. Trustee  
500 Tanca Street, Suite 301  
San Juan, PR 00901

JOSE RAMON CARRION  
P.O. Box 9023884  
San Juan, PR 00902  
Chapter 13 Trustee

ELSA ALCANTARA GARCIA  
P.O. Box 4124  
Carolina, PR 00984  
Joint Debtor

ROSA E. RODRIGUEZ-VELEZ  
United States Attorney  
District of Puerto Rico  
Torres Chardon, Suite 1201  
350 Carlos Chardon Ave.  
San Juan, PR 00918

LOYDIANNE TORRES  
281 Winston Churchill  
PMB 793  
138 Ave. Winston Churchill  
San Juan, PR 00926  
Debtors' Attorney

/s/ Thomas J. Jaworski